

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RICHARD ROSADO,

Petitioner,

v.

**9:16-CV-1422
(TJM/DJS)**

**D. McCULLOCH, Executive Director of Central
New York Psychiatric Center; J. NOWICKI, Chief
of Mental Health Services New York Psychiatric
Center Sex Offender Treatment Program,**

Respondents.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

Petitioner contends that his confinement in the New York Psychiatric Center violates his rights under the United States Constitution and seeks a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254. The Court referred the action to the Hon. Christian F. Hummel, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Report-Recommendation, dated September 26, 2018, recommends that the Court deny the petition. See *dk.* # 18. Magistrate Judge Hummel finds that Petitioner failed to exhaust his state court remedies before filing his petition and recommends dismissal on that basis. Even if the Court were to consider the merits of the petition,

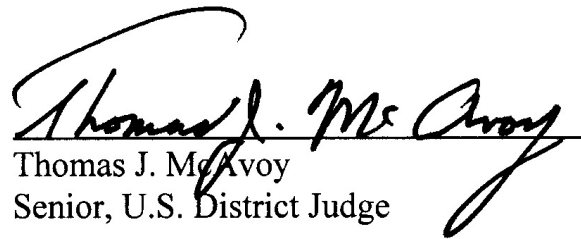
Magistrate Judge Hummel finds, the petition should be denied because Petitioner has received the annual reviews of his status prescribed by New York law and therefore has no claim for relief. Magistrate Judge Hummel also recommends that the Court decline to issue a certificate of appealability.

Petitioner filed objections to the Report-Recommendation. When a party objects to a magistrate judge's Report-Recommendation, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

After having reviewed the record *de novo* and having considered the issues raised in the Petitioner's objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Hummel for the reasons stated in the Report-Recommendation.

It is therefore **ORDERED** that Petitioner's objections to the Report-Recommendation of Magistrate Judge Hummel dkt. # 21, are hereby OVERRULED. The Report-Recommendation, dkt. # 18, is hereby ACCEPTED and ADOPTED, as follows:

1. Petitioner's petition for a writ of *habeas corpus*, dkt. # 1, is hereby **DENIED**;
2. Finding that Petitioner has failed to make a substantial showing of the denial of a constitutional right, the Court declines to issue a certificate of appealability


Thomas J. McAvoy
Senior, U.S. District Judge

IT IS SO ORDERED.

DATED: April 9, 2019